

# HOUSE BILL 866

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2lr3115  
CF SB 724

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By: **Delegate Feldman**

Introduced and read first time: February 9, 2012

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 3, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Title Insurance – Closing or Settlement Protection Practices – Study**

3 FOR the purpose of requiring ~~certain domestic title insurers to establish and maintain~~  
4 ~~a certain reserve for certain losses arising from closing or settlement protection;~~  
5 ~~authorizing the amount in reserve to be released in certain amounts under~~  
6 ~~certain circumstances; authorizing a domestic title insurer to withdraw the~~  
7 ~~entire reserve under certain circumstances; requiring a certain notice to include~~  
8 ~~certain information about certain closing or settlement protection; authorizing a~~  
9 ~~method to cure a certain failure to obtain a certain notice; requiring a title~~  
10 ~~insurer to provide certain closing or settlement protection to a certain protected~~  
11 ~~party in a certain transaction; requiring the closing or settlement protection to~~  
12 ~~indemnify certain persons against certain actions and failures in connection~~  
13 ~~with certain transactions; limiting the extent of a certain indemnification;~~  
14 ~~prohibiting the indemnification from being provided for certain losses or~~  
15 ~~impairments; requiring certain title insurers to file for approval by the~~  
16 ~~Maryland Insurance Commissioner of a certain premium; establishing a~~  
17 ~~minimum amount of the premium; providing that the premium may not be~~  
18 ~~subject to a certain agreement; authorizing a title insurer to provide a certain~~  
19 ~~statement of coverage; prohibiting a title insurer from providing certain other~~  
20 ~~coverage for a certain indemnification; requiring certain title insurers to file a~~  
21 ~~certain initial premium on or before a certain date; providing for the application~~  
22 ~~of this Act; providing for the effective dates of this Act; the Maryland Insurance~~  
23 Commissioner to study closing or settlement protection practices of the title  
24 insurance industry and to make certain recommendations; requiring the  
25 Commissioner to consider certain matters in conducting the study; authorizing

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 the Commissioner to consult with certain persons and entities in conducting the  
 2 study; requiring the Commissioner to report certain findings and  
 3 recommendations to certain committees of the General Assembly on or before a  
 4 certain date; and generally relating to ~~title insurance protection~~ a study of  
 5 closing and settlement protection practices of the title insurance industry.

6 ~~BY adding to~~

7 ~~Article — Insurance~~  
 8 ~~Section 5-207 and 22-104~~  
 9 ~~Annotated Code of Maryland~~  
 10 ~~(2011 Replacement Volume)~~

11 ~~BY repealing and reenacting, with amendments,~~

12 ~~Article — Insurance~~  
 13 ~~Section 22-102~~  
 14 ~~Annotated Code of Maryland~~  
 15 ~~(2011 Replacement Volume)~~

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 17 MARYLAND, That ~~the Laws of Maryland read as follows:~~

18 (a) The Maryland Insurance Commissioner shall:

19 (1) study closing or settlement protection practices of the title  
 20 insurance industry, including mechanisms for, and associated costs of, compensating  
 21 consumers, title insurers, mortgage lenders, and other parties for monetary losses that  
 22 result from the theft, misappropriation, or misuse of funds held in escrow by a title  
 23 insurance producer in connection with a real estate transaction; and

24 (2) make recommendations for changes to the closing and settlement  
 25 protection practices of the title insurance industry in the State.

26 (b) In conducting the study, the Commissioner shall consider:

27 (1) title insurance producer defalcations reported to the Maryland  
 28 Insurance Administration by title insurers;

29 (2) title insurance producer defalcations discovered by the  
 30 Administration as a result of a complaint received by the Administration;

31 (3) the extent to which any regulations relating to the on-site review  
 32 by title insurers of their appointed title insurance producers have addressed the  
 33 problem of title insurance producer defalcations;

34 (4) the availability and affordability of fidelity bonds, escrow bonds,  
 35 reinsurance, or other coverage to protect title insurers against the theft,

1 misappropriation, or misuse of closing or settlement funds by its appointed title  
 2 insurance producers, other agents, or employees;

3 (5) the manner in which closing or settlement protection is being  
 4 addressed by other states, the National Association of Insurance Commissioners, and  
 5 the National Coalition of Insurance Legislators; and

6 (6) any other relevant matter, as determined by the Commissioner.

7 (c) In conducting the study, the Commissioner may consult with any person  
 8 or entity that the Commissioner determines appropriate, including representatives of:

9 (1) the title insurance industry;

10 (2) title insurance producers;

11 (3) mortgage lenders;

12 (4) the Division of Consumer Protection of the Office of the Attorney

13 General;

14 (5) the real estate industry; and

15 (6) the Maryland Real Estate Commission.

16 (d) On or before December 1, 2012, the Commissioner shall report to the  
 17 Senate Finance Committee and the House Economic Matters Committee, in  
 18 accordance with § 2-1246 of the State Government Article, on the findings and  
 19 recommendations of the study conducted by the Commissioner under this section.

20 ~~Article Insurance~~

21 ~~5-207.~~

22 ~~(A) (1) IN ADDITION TO THE RESERVES REQUIRED UNDER § 5-206 OF~~  
 23 ~~THIS SUBTITLE, A DOMESTIC TITLE INSURER SHALL SET ASIDE, AS A RESERVE~~  
 24 ~~FOR LOSSES ARISING FROM CLOSING AND SETTLEMENT PROTECTION UNDER~~  
 25 ~~§ 22-104 OF THIS ARTICLE, ONE HALF OF ALL PREMIUMS AND FEES FOR~~  
 26 ~~PROVIDING THAT PROTECTION IN THE STATE OR ANY OTHER JURISDICTION~~  
 27 ~~UNTIL THE RESERVE HAS A MINIMUM BALANCE OF:~~

28 ~~(i) \$6,000,000 IF THE TITLE INSURER, AS OF THE~~  
 29 ~~PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF~~  
 30 ~~LESS THAN \$5,000,000;~~

1 ~~(H) \$4,000,000 IF THE TITLE INSURER, AS OF THE~~  
2 ~~PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT~~  
3 ~~LEAST \$5,000,000 AND LESS THAN \$10,000,000; OR~~

4 ~~(HH) \$2,000,000 IF THE TITLE INSURER, AS OF THE~~  
5 ~~PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT~~  
6 ~~LEAST \$10,000,000 AND LESS THAN \$15,000,000.~~

7 ~~(2) A DOMESTIC TITLE INSURER WITH SURPLUS AS REGARDS~~  
8 ~~POLICYHOLDERS OF AT LEAST \$15,000,000 MAY NOT BE REQUIRED TO~~  
9 ~~ESTABLISH A RESERVE UNDER THIS SECTION.~~

10 ~~(B) THE AMOUNT SET ASIDE IN RESERVE SHALL BE RELEASED AS~~  
11 ~~FOLLOWS:~~

12 ~~(1) IMMEDIATELY ON THE OCCURRENCE OF A LOSS ARISING~~  
13 ~~UNDER § 22-104 OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THE AMOUNT~~  
14 ~~OF THE LOSS; OR~~

15 ~~(2) OVER A 4 YEAR PERIOD, 25% OF THE AGGREGATE AMOUNT OF~~  
16 ~~THE RESERVE DEPOSITED IN THE RESERVE IN EACH OF THE 4 YEARS~~  
17 ~~PRECEDING THE RELEASE AS OF JULY 1 OF THE RELEASE YEAR, LESS ANY~~  
18 ~~AMOUNT NEEDED TO MAINTAIN THE MINIMUM REQUIRED BALANCE.~~

19 ~~(C) A DOMESTIC TITLE INSURER THAT HAS PLACED FUNDS IN RESERVE~~  
20 ~~MAY WITHDRAW THE ENTIRE RESERVE UNDER SUBSECTION (B)(2) OF THIS~~  
21 ~~SECTION IF:~~

22 ~~(1) THE TITLE INSURER MAINTAINS A SURPLUS AS REGARDS~~  
23 ~~POLICYHOLDERS OF AT LEAST \$15,000,000;~~

24 ~~(2) A FINAL ORDER OF LIQUIDATION OF THE TITLE INSURER IS~~  
25 ~~ENTERED; OR~~

26 ~~(3) THE TITLE INSURER VOLUNTARILY RELINQUISHES, OR~~  
27 ~~COMPLIES WITH A FINAL ORDER OF SURRENDER OF, ITS CERTIFICATE OF~~  
28 ~~AUTHORITY TO CONDUCT BUSINESS IN THE STATE.~~

29 ~~22-102.~~

30 ~~(a) Except as provided in subsection [(d)] (E) of this section, when, in~~  
31 ~~connection with a real estate transaction that involves a purchase money mortgage or~~  
32 ~~deed of trust on land in the State, a title insurer accepts a premium for a policy that~~  
33 ~~insures the title to the property or the title insurer, its agent, or employee accepts a~~  
34 ~~premium for mortgage title insurance, the person first accepting the premium:~~

1           ~~(1) shall insert the name of each insured in the binder for the title~~  
2 ~~insurance or the title report; and~~

3           ~~(2) immediately on receipt of the premium, shall deliver to the buyer~~  
4 ~~or agent or attorney of the buyer written notice:~~

5                   ~~(i) of the name of each insured under the policy;~~

6                   ~~(ii) of the face amount of the policy;~~

7                   ~~(iii) of the buyer's right and opportunity to obtain simultaneous~~  
8 ~~title insurance in the buyer's favor;~~

9                   ~~(iv) of the additional premium that will be required for purchase~~  
10 ~~of simultaneous title insurance in the buyer's favor;~~

11                   ~~(v) that the buyer's title insurance will be subject only to the~~  
12 ~~contingencies and conditions contained in the binder, title report, and policy;~~

13                   ~~(vi) of the buyer's right to review a sample of the form of policy~~  
14 ~~in which the contingencies and conditions will be inserted; [and]~~

15                   ~~(vii) that contains a clear statement of the contingencies that~~  
16 ~~must be satisfied to make the buyer's policy effective, if the buyer's policy is not~~  
17 ~~effective on payment of the premium; AND~~

18                   ~~(VIII) 1. THAT CLOSING OR SETTLEMENT PROTECTION~~  
19 ~~SHALL BE PROVIDED AGAINST THEFT OR MISUSE OF FUNDS BY THE TITLE~~  
20 ~~INSURER OR ITS AGENT OR EMPLOYEE UNDER § 22-104 OF THIS SUBTITLE; AND~~

21                   ~~2. OF THE PREMIUM THAT WILL BE CHARGED FOR~~  
22 ~~THIS COVERAGE.~~

23           ~~(b) Before disbursing any funds, the person required to give notice under~~  
24 ~~subsection (a) of this section shall obtain from the buyer, at the time the person~~  
25 ~~delivers the notice, a statement in writing that the buyer has received the notice~~  
26 ~~described in subsection (a) of this section and that the buyer wants or does not want~~  
27 ~~owner's title insurance.~~

28           ~~(c) (1) The person required to give notice under subsection (a) of this~~  
29 ~~section shall retain the original signed statement of receipt required by subsection (b)~~  
30 ~~of this section and a copy of the notice required by subsection (a) of this section for 3~~  
31 ~~years.~~

~~(2) The statement of receipt and notice shall be available for inspection by the Commissioner on request.~~

~~(d) IF THE PERSON FIRST ACCEPTING THE PREMIUM FAILS TO OBTAIN FROM THE PARTY TO THE CLOSING OR SETTLEMENT THE STATEMENT REQUIRED BY SUBSECTION (B) OF THIS SECTION AT OR BEFORE THE CLOSING OR SETTLEMENT AND DISBURSEMENT OF ANY FUNDS, THE FAILURE TO OBTAIN THE STATEMENT MAY BE CURED AT ANY TIME AFTER THE CLOSING OR SETTLEMENT AND BEFORE ACTUAL OR CONSTRUCTIVE NOTICE OF A POSSIBLE CLAIM THAT WOULD HAVE BEEN COVERED BY CLOSING OR SETTLEMENT PROTECTION UNDER § 22-104 OF THIS SUBTITLE BY SENDING A CERTIFIED LETTER, RETURN RECEIPT REQUESTED, TO THE PARTY AT THE PARTY'S LAST KNOWN ADDRESS.~~

~~(E) This section does not apply to a real estate transaction involving a mortgage or deed of trust securing an extension of credit made:~~

~~(1) solely to acquire an interest in or to carry on a business or commercial enterprise; or~~

~~(2) to any business or commercial organization.~~

~~22-104.~~

~~(A) IN THIS SECTION, "PROTECTED PARTY" MEANS A LENDER, BORROWER, SELLER, OR BUYER WHO IS A PARTY TO A TRANSACTION IN WHICH A TITLE INSURANCE POLICY WILL BE ISSUED.~~

~~(B) A TITLE INSURER SHALL PROVIDE CLOSING OR SETTLEMENT PROTECTION TO A PROTECTED PARTY IN ACCORDANCE WITH THIS SECTION.~~

~~(C) (1) THE CLOSING OR SETTLEMENT PROTECTION SHALL INDEMNIFY A PROTECTED PARTY AGAINST ONLY THE LOSS OF CLOSING OR SETTLEMENT FUNDS BECAUSE OF:~~

~~(I) THEFT OR MISAPPROPRIATION OF SETTLEMENT FUNDS IN CONNECTION WITH A TRANSACTION IN WHICH A TITLE INSURANCE POLICY WILL BE ISSUED BY OR ON BEHALF OF THE TITLE INSURER; OR~~

~~(II) FAILURE TO COMPLY WITH THE WRITTEN CLOSING INSTRUCTIONS IF AGREED TO BY THE TITLE INSURER OR THE TITLE INSURER'S APPOINTED PRODUCER.~~

1           ~~(2) THE INDEMNIFICATION UNDER PARAGRAPH (1) OF THIS~~  
2 ~~SECTION IS ONLY TO THE EXTENT THAT THE ACTION OR FAILURE RELATES TO~~  
3 ~~THE STATUS OF THE TITLE TO:~~

4           ~~(I) THAT INTEREST IN LAND; OR~~

5           ~~(II) THE VALIDITY, ENFORCEABILITY, AND PRIORITY OF THE~~  
6 ~~LIEN ON THE MORTGAGE OR DEED OF TRUST ON THAT INTEREST IN LAND.~~

7           ~~(D) INDEMNIFICATION UNDER THIS SECTION MAY NOT BE PROVIDED~~  
8 ~~FOR:~~

9           ~~(1) LOSS OR IMPAIRMENT OF TRUST MONEY IN THE COURSE OF~~  
10 ~~COLLECTION OR WHILE ON DEPOSIT WITH A FINANCIAL INSTITUTION DUE TO~~  
11 ~~FAILURE, INSOLVENCY, BANKRUPTCY, OR SUSPENSION OF THE FINANCIAL~~  
12 ~~INSTITUTION;~~

13           ~~(2) LOSS TO A PROTECTED PARTY ARISING FROM FRAUD BY THAT~~  
14 ~~PROTECTED PARTY OR AN EMPLOYEE OR AGENT OF THE PROTECTED PARTY; OR~~

15           ~~(3) LOSS THAT EXCEEDS THE ACTUAL AMOUNT OF FUNDS STOLEN~~  
16 ~~OR MISAPPROPRIATED FROM THE PROTECTED PARTY DEPOSITED WITH THE~~  
17 ~~TITLE INSURER OR PRODUCER IN CONNECTION WITH THE CLOSING.~~

18           ~~(E) (1) EACH TITLE INSURER SHALL FILE FOR APPROVAL BY THE~~  
19 ~~COMMISSIONER A PREMIUM TO BE COLLECTED FOR EACH TRANSACTION AT~~  
20 ~~WHICH CLOSING OR SETTLEMENT PROTECTION IS PROVIDED.~~

21           ~~(2) REGARDLESS OF THE NUMBER OF PROTECTED PARTIES IN~~  
22 ~~THE TRANSACTION, THE PREMIUM SHALL BE AT LEAST \$50.~~

23           ~~(3) THE PREMIUM MAY NOT BE SUBJECT TO AN AGREEMENT~~  
24 ~~REQUIRING A DIVISION OF FEES OR PREMIUMS COLLECTED ON BEHALF OF THE~~  
25 ~~TITLE INSURER.~~

26           ~~(F) A TITLE INSURER OR PRODUCER MAY PROVIDE TO A PROTECTED~~  
27 ~~PARTY A STATEMENT OF COVERAGE THAT IS CONSISTENT WITH THIS SECTION.~~

28           ~~(G) A TITLE INSURER MAY NOT PROVIDE ANY OTHER COVERAGE TO~~  
29 ~~INDEMNIFY AGAINST IMPROPER ACTS OR OMISSIONS OF A PERSON WITH~~  
30 ~~REGARD TO CLOSING OR SETTLEMENT SERVICES.~~

31           ~~SECTION 2. AND BE IT FURTHER ENACTED, That on or before August 1,~~  
32 ~~2012, each domestic title insurer shall file its initial premium for approval by the~~

1 ~~Maryland Insurance Commissioner under § 22-104(e) of the Insurance Article, as~~  
2 ~~enacted by this Act.~~

3 ~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall~~  
4 ~~take effect October 1, 2012, and shall affect all title insurance policies, closings, and~~  
5 ~~settlements in the State on or after October 1, 2012.~~

6 ~~SECTION 4. 2. AND BE IT FURTHER ENACTED, That, except as provided in~~  
7 ~~Section 3 of this Act, this Act shall take effect July 1, 2012.~~

Approved:

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Governor.

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Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.